IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12101 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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ATUL G PANDYA

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 12101 of 2000

MR BB NAIK for Petitioner No. 1

MS PJ DAVAWALA for Respondent No. 1 and 2.

Mr. H.L. Jani, APP for Respondent No. 3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 05/07/2001

ORAL JUDGEMENT

Heard learned advocate Mr. Naik for the petitioner and the learned Addl. Standing Counsel Ms. P.J. Davawala for respondents No.1 and 2 and the learned

AGP Mr. Jani for the respondent No. 3. In this petition under Article 226 of the the Constitution of India, the petitioner has challenged the impugned order of detention dated 12th October, 2000 passed by respondent NO.2 herein whereunder the detenu, brother of the petitioner has been ordered to be detained. The order of detention passed against the detenu was actually executed on 14th October, 2000. The impugned order of detention was passed under section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (as amended) [hereinafter referred to as "the COFEPOSA Act" for short]. Under the said order, the detenu has been ordered to be lodged in the custody of the Central Prisons, Sabarmati, Ahmedabad. The grounds of detention were communicated to the detenu by the detaining authority - respondent No.2. Respondent No.2 has filed detailed affidavit in reply to the present petition on 29th January, 2001. Rejoinder thereto has been filed by the petitioner on 31st March, 2001. Thereafter, again sur-rejoinder has been filed by the respondent No.2 on 24th April, 2001. Brief facts of the present petition are as under:

2. The brother of the petitioner namely Kaushik G. Pandya has been detained under the provisions of the COFEPOSA Act by order of detention dated 12.10.2000 bearing No. F.673/57/2000-Cus VIII by respondent No.2. That the said impugned order of detention was actually served upon the detenu on 14.10.2000 without serving grounds of detention and the documents and materials relied upon by the detaining authority for passing the impugned order of detention. That on the basis of the specific intelligence that Tetracycline would be imported by concealment in a container of Wet Dates at Mumbai, the officers of the Directorate of Revenue Intelligence ("DRI"), the Zonal Office, Mumbai, located and kept a discreet watch on container No. CRXU.2230206 on its arrival from Dubai. On June 7, 2000, the officers of the DRI Mumbai opened and examined the said container in presence of two independent panchas and in presence of Shri Hemant N. Palan, partner of Custom House Agency, M/s. Ajay Clearing Enterprises and the container was found to contain 727 Yellow Colour Bags of Wet Dates bearing marking "BK DATES, BEST SELECTED DATES, ZAHDI GOLDEN" with the prints of Palm Trees on both sides on the front and no marking on the other side of the bad. It is further alleged by the petitioner that the said container was also found to contain 60 light yellow colored plastic bags with no markings. That on opening such bag, it was found to contain yellow colored powder in three plastic bags and these plastic bags contained a

packing slip with the following details 'TETRACYCLINE HYDRO CHLORIDE (NON STERILE BULK) GROSS WEIGHT 28.2 KGS. NET WEIGHT 25.0 KGS. MFG. DATE 1999-02. EXP.2003.02 MADE IN P.R. CHINA SICHWAN PHARMACEUTICAL COMPANY LIMITED.'It is further alleged in para 3 of the petition that thereafter, the statement of Shri Pravin Sheshappa Kotian Partner of M/s. Ajay Clearing Enterprises was recorded on 7th June, 2000 and he has stated that he has no knowledge about the clearance work taken by his partner Mr. Hemant N. Palan; that Shri Hemant N. Palan, in his statement dated 7th June, 2000, recorded under section 108 of the Customs Act, 1962 stated inter alia that he is one of the partners of M/s. Ajay Clearing Enterprises; that M/s. Ajay Clearing Enterprises, Mumbai, is handling clearance of Import and Export Cargo; that when he visited his friend Mr. Ashok Thakkar's office, Mr. Thakkar introduced him to one Mr. Hanif who wanted to clear one import consignment; that Mr. Hanif had brought some import documents relating to import of wet dates from Dubai; that he inspected the said import documents and found few documents were not brought by Mr. Hanif and he requested Hanif to bring the remaining documents on 3.6.2000 at the office of Mr. Ashok Thakkar; that accordingly, he handed over the said documents to him at Ashok Thakkar's office; that he was submitting the import and other related documents of M/s. Plus Point Enterprises, Ahmedabad, having 139 pages; that he did not know Mr. Hanif or the proprietor of M/s. Plus Point Enterprises; that he presented the import documents to the Customs House, Mumbai, for filing the bill of entry No. 129141 dated 6.6.2000 for clearing the import cargo of 21.450 Mts. of Wet Dates (Tranian Origin) totally valued at Rs.1,20,102.57.

It is also alleged by the petitioner in para 3.1 of the petition that thereafter, various statements were recorded by the officers of DRI at Ahmedabad and the officers of the DRI at Mumbai under section 108 of the Customs Act. It is also alleged in para 3.2 of the petition that one Shri Shaikh Anwar, in his statement dated 7.6.2000, recorded u/s.108 of the Act inter alia stated that he contacted M/s. Al Ghauth General Trading (L.I.C.) PO Box No. 222904 Dubai in the month of November, 1999 for the present consignment of 21 Mts of Wet Dates imported by M/s. Plus Point Enterprises, Ahmedabad; that he contacted on Prakash of M/s. Servotech International, Dubai, and placed the order of 4 Mts. of Tetracycline Hydrochloride; that he made payment of 31000 UAE Dirhams as advance; that he, Mr. Pradip K. Shah of M/s. Plus Point Enterprises, Ahmedabad and the detenu, proprietor of M/s. Pharma Deal, Ahmedabad had

planned to import Wet Dates and Tetracycline from Dubai; that the detenu had financed the import of the said goods and the detenu was to receive tetracycline and sell the same in the local market; that he on behalf of all placed the order with the overseas supplier for import of wet dates and tetracycline and that he had to dispose of the wet dates in the local market; that he left for Dubai on 30.4.2000 and on 12.5.2000 for the said purpose; that the payment of Rs. 20.50 lakhs was made by the detenu of M/s. Pharma Deal through hawala route; that on 22.5.2000 container No. CRXU 2230206 was stuffed with about 20 Mts. of Wet Dates and 1.5 Mts. of Tetracycline at the godown of M/s. Al Ghauth General Trading (LLC) Dubai, in his presence; that invoice and packing list were prepared by M/s. Al Ghauth General Trading (LLC) as per his advice for 21.450 Mt. Wet Dates valuing US $ 2681; that the tetracycline hydrochloride is of China origin; that he had seen the certificate of Analysis issued by M/s. Bailing Pharmaceuticals Factory, China, withdrawn from his residence and that the same was handed over to him by Prakash of M/s. Servotech international; that he, Pradip K. Shah, Proprietor of M/s. Plus Point Enterprises, Ahmedabad and the detenu, Proprietor of M/s. Pharma Deal Ahmedabad had the full and complete knowledge that Tetracycline Hydrochloride was a restricted item and could not be imported; that the bill of entry for Wet Dates was prepared by CHA on the basis of documents forwarded by him through his friend Shri Hanif who had gone to Mumbai for personal work; that he and Shri Pradi were to receive Rs.50,000.00 each as commission apart from the expenses incurred by him for his trip to Dubai; that the detenu was to earn the margin from selling it in the local market. In para 3.3 of the petition, the petitioner has further submitted that the statement of the detenu was also recorded on 8.6.2000 u/s.108 of the Act and it is alleged in his statement, inter alia, that the detenu studied upto SSC; that the detenu knew Shri Shaikh Anwar since four years; that the detenu started dealing in sale of raw material after supply of the same by Shri Anwar; that the detenu had not received any Bill for Tetracycline Hydrochloride and Vitamin 81 from Shri Anwar and were selling the same without bills and in cash; that these raw materials were imported; that the detenu had given Rs.20.5 lacs to Shri Anwar for bringing Tetracycline Hydrochloride from Dubai; that Shri Anwar had asked for commission of Rs.50,000.00 per consignment and also Rs.50,000.00 for Shri Pradeep Shah, Proprietor of M/s. Plus Point Enterprises; that the whole procedure for import of Tetracycline Hydrochloride was done by Shri Anwar who had been to Dubai; that Shri Anwar had told you tetracycline hydrochloride will be imported with cover

cargo like paraffin was and wet dates; that market value of tetracycline hydrochloride is Rs.1,2000.00 per kg. with bill. It is further alleged in the grounds of detention, as per para 3.4 of the petition, that the further statement of the detenu was recorded on June 9, 2000 in which he stated that the statement of the detenu dated 8.6.2000 was correct; that the detenu had financed the import of 1500 kgs of tetracycline hydrochloride by M/s. Plus Point Enterprises through Shri Shaikh Anwar.

In para 4 of the petition, the petitioner has submitted that the detenu was, thereafter, arrested on 9.6.2000 and was produced before the learned Addl. Chief Judicial Magistrate, Ahmedabad and was remanded to the judicial custody and thereafter he was released on bail by this court. It is stated by the petitioner in the said paragraph that the officers of the DRI at Ahmedabad after completing the investigation, made proposal to the detaining authority i.e. respondent no.2 herein for issuing order of detention and accordingly, the detaining authority issued order of detention on 12.10.2000 which was served on the detenu on October 14, 2000 and the detenu was detained from that day onwards and still he is undergoing the detention under the said order of detention.

During the course of hearing, learned advocate Mr. Naik appearing for the petitioner has submitted that the impugned order of detention has been challenged on various grounds. However, according to him, the ground raised by the petitioner in para 16 of the memo of petition is enough for quashing and setting aside the impugned order of detention. According to him, on such similar ground, this court (Coram : M.S. Parikh,J.) has set aside the impugned order of detention passed under the provisions of the COFEPOSA Act in special civil application no. 5659 of 1996 vide judgment and order dated 8th April, 1997. The respondents have filed detailed affidavit in reply denying each and every contention raised by the petitioner and have pointed out that the voluntary statement of the detenu u/s.108 of the Act as well as the voluntary statement of Shaikh Anwar and other co-accused which also were recorded u/s.108 of the Act are fully corroborating the facts regarding smuggling of 1500 kg. of Tetracycline Hydrochloride. The detenu is admitted to have financed the import of 1500 kg. tetracycline hydrochloride through Shaikh Anwar. The detenu further disclosed in his statement dated 8.6.2000 that Shri Anwar had asked for a commission of Rs.50000.00 per consignment and also Rs.50,000.00 for Shri Pradeep Shah, Proprietor of M/s. Plus Point

Enterprises. Shri Anwar had also told the detenu that tetracycline hydrochloride would be imported with cover cargo like Paraffin Wax and Wet Dates. The detenu admittedly had not received any bill for Tetracycline Hydrochloride from Shri Anwar and was selling the same without bills and in cash. It is respectfully submitted that the detention order was not passed only on the basis of statement recorded from Shaikh Anwar but other materials relied upon including the statements of the detenu himself recorded u/s.108 of the Act were also carefully considered before deriving the subjective satisfaction. The deponent of the affidavit in reply made on behalf of the Union Government has further contended in para 9 of the affidavit in reply that the impugned order of detention was executed on 14.10.2000 and the grounds of detention alongwith the relied upon documents were supplied to the detenu on 17.10.2000 which is well within the time limit specified in section 3(3) of the COFEPOSA Act, 1974. The violation of the detenu's right to make an effective representation under Article 22(5) of the Constitution has been denied by the answering respondent. In para 10, in reply to the contentions raised by the petitioner in para 12 and 13 of the petition, the answering respondent has specifically contended that the detenu had engaged himself in financing smuggling of tetracycline hydrochloride with full knowledge and active participation. Financing is a very important element of smuggling activity and hence his role in the smuggling of goods in this case is as significant as that of his two other co-accused namely Shri Pradeep Shah and Shri Anwar Shaikh; it is also evident from the material relied upon that the detenu had been selling and purchasing smuggled goods and, hence, the charge has also been correctly levelled against him of dealing in smuggled goods otherwise than by engaging in transporting or concealing or keeping smuggled goods. In answer to para 14 of the petition, the deponent has contended that all the documents served on the detenu are legible; the detenu had not bothered to specify as to which documents are illegible and, hence, such a vague plea has no force. It has been denied that his right to make effective representation has been violated in any manner whatsoever as alleged. Thus, the respondent has tried to justify the impugned order of detention passed against the detenu by the second respondent. However, against the said reply, the petitioner has filed rejoinder and thereafter, sur rejoinder has been filed by the respondent No.2.

According to Mr. Naik, learned advocate for the petitioner, in view of the contentions raised by the

petitioner in para 16 of the petition, the impugned order of detention is required to be quashed and set aside. The contentions raised in para 16 of the petition read as under:

"16. It is respectfully submitted that there are some seals and there are some writings on documents at pages Nos. 149, 163, 165, 167, 173, 175, 177 and 179, which are totally illegible and it is not possible to make out in which language the same is write. It is respectfully submitted that the said writing and the seal at other places is definitely not in English, Gujarati or Hingi Languages. It is not possible for the detenu to make out in which language the said writing is. Even the detaining authority is also not in a position to know the language of the said writing and the contents of the said writing, as it seems that the said writing is in some foreign language, which is not known to the detaining authority. It is respectfully submitted that no translation of the said writing appearing on those pages is supplied to the detenu. It is respectfully submitted that the detenue have been supplied with the said pages as they are with a writing that the writing is in Urdu and translation in Gujarati language of the same is not supplied to the detenue. Even the translation of the said Urdu contents of the said documents in English is not placed before the detaining authority and the detaining authority is not knowing Urdu language and, therefore, it is not possible for the detaining authority to understand the contents of the said writing. It is, therefore, stated and submitted that the detaining authority has relied upon the documents which the detaining authority was not able to write, read and understand while passing the detention order and, therefore, the detention order is suffering from total non application of mind on the part of the detaining authority and the same is required to be revoked, quashed and set aside forthwith and, the detention of the detenu in pursuance of such illegal detention order is totally violative of the provisions of Articles 21 and 22 of the Constitution of India. It is respectfully submitted that, if English translation of those Urdu writings on the paper mentioned above, is supplied to the detaining authority, then, the same is also required to be supplied to the detenu. It is respectfully

submitted that the detenu is not supplied with the said English Translation which might be placed before the detaining authority for passing the order of detention and for formulating the grounds of detention and, therefore, valuable right of the detenu to make effective representation guaranteed under Article 22(5) of the Constitution of India is violated and, therefore, order of detention is required to be quashed and set aside and the continued detention of the detenu is required to be held illegal and the detenu is required to be set at liberty forthwith. It is respectfully submitted that the detenu was not supplied with the translation of the said Urdu writing appearing at various pages as mentioned above and, therefore, it is not possible for the detenu to make effective representation against the same and his right to make effective representation guaranteed under Article 22 (5) of the Constitution of India is adversely affected and, therefore, his continued detention is highly illegal, unlawful and violative of provisions of Articles 14, 21 and 22 of the Constitution of India and, therefore, the detenu may kindly be set at liberty immediately by quashing and revoking the impugned order of detention passed by the detaining authority against the detenue. "

Learned Addl. Standing Counsel Ms. P.J. Davawala appearing for the Union Government has submitted that the aforesaid contentions have been replied by respondent No.2 by filing affidavit in reply para 13 at page 84 (internal page 6). It reads as under:

"13. With regard to para No. 16, it is respectfully submitted that the pages nos. mentioned by the Petitioner are the pages of passport of Shri Shaikh Anwar carrying the immigration seals of the countries visited by him. The seals clearly indicate in English the names of the countries visited and the dates. The detaining authority has relied upon the passport of Shaikh Anwar to see the countries he visited and the dates. Other details written in the language of that country on those seals were not taken into consideration by him while passing the Detention Order."

Looking to the contention which has been raised by Mr. Naik and also in light of the reply submitted by

respondent NO.2, from the aforesaid contentions, it can be seen that the petitioner has challenged the impugned order as well as the continued detention on the basis of the contentions raised in the said ground. For examining the correctness of the facts alleged in the grounds raised in the memo of petition, the exercise was undertaken by this court to verify the relevant pages in presence of both the learned advocates. Learned Addl. Standing Counsel Ms. Davawala as well as Mr. Jani, learned AGP appearing for the respondents have also joined the exercise and have concurred with the such verification of relevant documents which have been seen from the reading of those pages. All those pages undoubtedly indicate number of endorsement and stamps containing endorsements in language other than English, probably in Urdu or Persian. It is not in dispute that the copies of the passport of the detenu and Shaikh Anwar and other passengers have been listed in the list of documents without there being any reference to the effect that only entries made in English language are relied upon by the detaining authority. I have perused the grounds of detention communicated to the detenu. Nowhere in the grounds of detention, it could be noticed that the detaining authority has placed reliance only upon the stamps containing the endorsements in English language. With these facts which are either not disputed or could not be disputed, assertion in the affidavit in reply might be noticed. It has been asserted in the affidavit in reply that the documents which are copies of the passport of Shaikh Anwar and his relative bear stamps of the authorities regarding their visit to UAE. It has further been asserted that it can be seen from the record that Shaikh Anwar and others made frequent visits to UAE and without giving understanding what was the passport and other VISA entries in the passport. Thus, there is no question of non application of mind or mechanical exercise of power as per the assertions made by the respondents, on the part of the detaining authority.

From the aforesaid explanation tendered by the detaining authority, it can be seen that the detaining authority has remained silent about the fact that he knew Urdu or Persian or the language of the document other than English language. It is not possible to make out either from the grounds of detention or from the affidavit in reply as to whether any translation of the endorsement were placed before the detaining authority or not. However, it is a fact that the list of document does not contain any translation of the said endorsements and, therefore, obviously, the detenu has been deprived of the material in the form of translation in order to

enable him to make an effective representation from the entries of the endorsements in the respective passports. It has, therefore, been submitted on behalf of the detenu that there is clear violation of Article 22 (5) of the Constitution of India and in any case the continued detention of the detenu would stand vitiated.

Reference in this connection has been made firstly to a decision of the Bombay High Court in the case between Shri Cyrous Orojali Kangani v. L. Moingliana, Secretary (Preventive Detention) to the Government of Maharashtra, Home Department and 4 others in Criminal Writ Petition No. 1343 of 1990. A division bench of the Bombay High Court (Coram : S.W. Puranik and M.F. Saldanha,JJ) (Per Puranik,J.) in the similar circumstances upheld a similar ground of challenge against the detention order under the COFEPOSA Act. In that case, it was contended by the petitioner that in the passport of the detenu relied upon by the detaining authority and listed in the list of documents relied upon by the detaining authority, there were entries in Urdu and/or Persian script and apparently the detaining authority would not understand the said languages and yet the translation thereof was neither placed before the detaining authority nor furnished to the detenu. Under such circumstances, the Bombay High Court held that the order of detention could not be said to be legal on account of non communication of the material on which reliance was placed by the detaining authority. An attempt has been made by the learned Additional Standing Counsel appearing for the authorities to explain this decision by referring to the impugned order of detention which inter alia contains reference to the number of visits made by said Shaikh to particular places during the particular span of period. She has, therefore, tried to submit that what the detaining authority relied upon was only the entries made at the Airports either of UAE or of Dubai/Sharjah. She has, however, not been able to explain as to why in the list of documents the copies of the passports are generally referred to and not by the particular entries. She also could not explain as to why there is no reference made to the specific reliance alleged to have been placed upon the entries in English language. On a reference to the synopsis made to the reading of the entries it would be seen that some of the entries in English language are also not legible. Therefore, in any event, it cannot be said that the detenu had been communicated the grounds including the material relied upon by the detaining authority and the right of the detenu under Article 22 (5) of the Constitution for making an effective representation could

be successfully argued to have been impelled. On a reference to affidavit in reply, the detaining authority has not said that he had discarded the entries in language other than English language. In that view of the matter, the decision of the Bombay High Court would clearly be applicable to the facts of the present case and I have no reason to differ from the reasons assigned by the said Court. Before the Division Bench, a similar submission was made and the Court held that since the grounds of detention did not specify that the passport was looked into only for the entry and exit entries in English language, but they were apparently relied upon in its entirety as a document, the reply affidavit submitted at the stage of hearing was held to be an afterthought. In the present case, there is nothing in the affidavit in reply including even the submissions made by Ms. Davawala, learned Additional Standing Counsel for the Central Government.

Mr. Naik, learned counsel appearing for the petitioner has also made a reference to a bench decision of this court in special criminal application no. 224 of 1986 dated 14th August, 1986 (Coram : G.T. Nanavaty and B.S. Kapadia,JJ. as Their Lordships were). In that case also, the contention was that the relevant letter referred to in the list of documents relied upon by the detaining authority was in Gujarati and was not translated in English and admittedly the detaining authority did not know Gujarati. It, therefore, could not be considered the document and thus, it was submitted that there was non application of mind on his part and, therefore, his subjective satisfaction was vitiated. The said contention was accepted by this court while referring to the other Bombay decisions. In the present case, even assuming that the detaining authority had some material in the form of translation or assistance, the same has not been supplied to the detenu. Therefore, it could not be said that the detenu was informed about the material forming part of the grounds of detention.

Learned Addl. Standing Counsel Ms. Davawala has submitted that the entries which are contained in the endorsement would obviously relate to number of visits of Shaikh Anwar and his relatives to the countries in the UAE. However, in so far as the incident in question (there is one incident in this case) is supported by other material which is set out in the grounds of detention and, therefore, the reasons set out in the grounds of detention would provide a separate ground of detention and even if that is discarded, the impugned order of detention would stand supported by other grounds

of detention and by virtue of section 5 A of the COFEPOSA Act, the same cannot be vitiated. In this connection, learned advocate Mr. Naik has drawn my attention to the decision of this court in case between Smt. Jyoti Om Prakash Punjabi versus Union of India and others in special civil application no. 3222 of 1995 converted from special criminal application no. 548 of 1995 rendered on 7.3.1996. A similar argument was canvassed in that case and the court has come to the following conclusion

"The matter was also examined from view point of provisions of section 5A of the Act. However, it is found that the statements of the detenu and his brother which were recorded in Gujarati language and which were translated into English language for the benefit of detaining authority refer to all the three incidents. Therefore, all the three grounds of detention stand vitiated for failure to communicate English version of statements to detenu and it is not possible to uphold detention order by resorting to the provisions of section 5A of the Act."

Learned advocate Mr. Naik has also relied upon the decision of this court in case of Ibrahim Noormohmed Patel versus Principal Secretariate rendered in special civil application no. 5659 of 1996 dated 8th April, 1997 (Coram : M.S. Parikh,J.) which also was a matter under the COFEPOSA Act and the continued detention of the detenu was held to be illegal and vitiated. In the instant case, there is only one incident as submitted above and, therefore, the grounds could not be said to be severable and, therefore, sec. 5A could not be resorted to as contended by the learned Addl. Standing Counsel for the Central Government.

Learned advocate Mr.Naik has also relied upon the decision of the division bench of this court in case of Kajal G. Sindhi versus Commissioner of Police, Ahmedabad reported in2000(2) GLR 1296 wherein the division bench of this court has held that the names and particulars of the witnesses withheld by the detaining authority - detaining authority did not state anything regarding his satisfaction of withholding of the names and particulars of the witnesses - hence caused prejudice to the detenu as he was deprived of right to make representation order of detention quashed.

Learned advocate Mr. Naik has also relied upon the apex court decision in case of Lallubhai Jogibhai

Patel versus Union of India and Others reported in AIR 1981 SC 728. Relevant observations made by the apex court in the said decision in para 18, 19 and 20 are reproduced as under:

" Where the materials not supplied to the detenu were evidently a part of those materials which had influenced the mind of the detaining authority in passing the order of detention, and the representation made by the detenu and forwarded to the Central Government at his instance was not disposed for a long time and the grounds of detention in English language were forwarded to him though he did not know English, continuation of his detention was illegal.

(paras 18, 19)

Art. 22 (5) of the Constitution requires that the grounds of detention must be "communicated" to the detenu. "Communicate" is a strong word. It means that sufficient knowledge of the basic facts constituting the 'grounds' should be imparted effectively and fully to the detenu in writing in a language which he understands. The whole purpose of communicating the 'ground' to the detenu is to enable him to make a purposeful and effective representation. If the 'grounds' are only verbally explained to the detenu and nothing in writing is left with him, in a language which he understands, then, that purpose is not served, and the constitutional mandate in Art. 22 (5) is infringed. (Para 20) "

He has also relied upon the decision of the Division Bench of this Court in case of Govind Changumal versus Commissioner of Police and others reported in 1990(1) GLH 504 wherein it has been observed by the division bench of this court in para 5 of the report as under:

"5. It would certainly be a different case if a person is totally illiterate. In such cases explanation of the grounds and material relied upon by the detaining authority in respect of the order of detention in the language which the detenu understands would be certainly sufficient compliance with the constitutional provisions and the relevant provisions of PASA. But in cases where the detenu is in a position to read and

write a particular language, then, in such cases, he is required to be furnished the grounds and other material relied upon by the detaining in the language which he knows and understands. Therefore, the contention of the learned counsel for the respondents that this decision may create difficulty in the way of the authorities whenever a person to be detained is totally illiterate cannot be accepted. In this view of the matter. the continued detention of the petitioner cannot be upheld."

Similarly, recently, the apex court, in case of P. Sarvanan versus State of Tamil Nadu and others reported in 2001 AIR SCW 2413, has considered the effect of cumulative material relying upon the decision in case of A. Saukath Ali v. Union of India reported in AIR SCW 2828 : (2005) 5 Scale 372. Relevant para 8, 9 and 10 reads as under :

"When we went through the grounds of detention enumerated by the detaining authority we noticed that there is no escape from the conclusion that the subjective satisfaction arrived at by the detaining authority was the cumulative result of all the grounds mentioned therein. It is difficult for us to say that the detaining authority would have come to the subjective satisfaction solely on the strength of the confession attributed to the petitioner dated 7.11.1999, particularly because it was retracted by him. It is possible to presume that the confession made by the co-accused Sowkath ALi would also have contributed to the final opinion that the confession made by the petitioner on 7.11.1999 can safely be relied on. What would have been the position if the detaining authority was appraised of the fact that Sowkath Ali had retracted his confession, is not for us to make a retrospective judgment at this distance of time.

9. The second contention that non-placement of the retraction made by Sowkath Ali would not have affected the conclusion as petitioner's confession stood unsullied, cannot be accepted by us. The detaining authority had relied on different materials and it was cumulative effect from those materials which led him to his subjective satisfaction. What is enumerated in S. 5-A of the COFEPOSA Act cannot, therefore, be

applied on the fact situation in this case.

10. In this context, it is to be mentioned that the detention order passed against Sowkath Ali was quashed by this court when he challenged that detention order under Article 32 of the Constitution [vide A. Sowkath Ali v. Union of India (2000) Scale 372:(2000 AIR SCW 2828)]."

I have considered the averments made by the petitioner as well as the respondents. I have also considered the submissions made by the learned advocates for the respective parties. I have also considered the decisions which have been cited by the learned advocates for the respective parties. According to my view, the submissions made by Mr. Naik stand supported by the aforesaid decision of this court as well as the apex court and the Bombay High Court and in the facts and circumstances of the case, particularly the fact with regard to passage of time to the extent of about three months and few days, I am inclined to accept the submissions made by Mr. Naik, the learned advocate for the petitioner.

None of the other grounds of challenge to the impugned order of detention as also the continued detention of the detenu has been pressed into service.

Hence, in the facts of the case, following order is passed.

The impugned order of detention dated 12th October, 2000 actually effected on 14th October, 2000 passed by respondent No. 2 u/S. 3(1) of the COFEPOSA Act is hereby quashed and set aside. The continued detention of the detenu is held to be illegal. The detenu Kaushik G. Pandya who has been detained at Sabarmati Central Prisons, Ahmedabad is directed to be set at liberty from preventive detention, if he is not required for any other case. Rule is made absolute accordingly. Direct Service is Permitted. There shall be no order as to costs.

5.7.2001. (H.K. Rathod,J.)

Vyas